

NOTICES OF PROPOSED RULEMAKING

Unless exempted by A.R.S. § 41-1005, each agency shall begin the rulemaking process by first submitting to the Secretary of State's Office a Notice of Rulemaking Docket Opening followed by a Notice of Proposed Rulemaking that contains the preamble and the full text of the rules. The Secretary of State's Office publishes each Notice in the next available issue of the *Register* according to the schedule of deadlines for *Register* publication. Under the Administrative Procedure Act (A.R.S. § 41-1001 et seq.), an agency must allow at least 30 days to elapse after the publication of the Notice of Proposed Rulemaking in the *Register* before beginning any proceedings for making, amending, or repealing any rule. (A.R.S. §§ 41-1013 and 41-1022)

NOTICE OF PROPOSED RULEMAKING

TITLE 9. HEALTH SERVICES

CHAPTER 10. DEPARTMENT OF HEALTH SERVICES HEALTH CARE INSTITUTIONS: LICENSING

[R08-143]

PREAMBLE

- 1. Sections Affected**
R9-10-1102
- Rulemaking Action**
Amend
- 2. The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**
Authorizing statutes: A.R.S. §§ 36-132(A)(1) and 36-132(A)(17), and 36-136(F)
Implementing statutes: A.R.S. §§ 36-151 through 36-160, 36-405, 36-406, and 36-411
- 3. A list of all previous notices appearing in the *Register* addressing the proposed rule:**
Notice of Rulemaking Docket Opening: 14 A.A.R. 778, March 14, 2008
- 4. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**
Name: Kathleen Phillips, Esq.
Rules Administrator and Administrative Counsel

Address: Department of Health Services
Office of Administrative Rules and Counsel
1740 W. Adams St., Suite 200
Phoenix, AZ 85007-2602

Telephone: (602) 542-1264
Fax: (602) 364-1150
E-mail: phillik@azdhs.gov
or
Name: Kathryn McCanna
Program Manager, Office of Medical Facilities Licensing

Address: Department of Health Services
Division of Licensing Services
Office of Medical Facilities Licensing
150 N. 18th Ave., Suite 450
Phoenix, AZ 85007-3445

Telephone: (602) 364-2841
Fax: (602) 364-4764
E-mail: mccannk@azdhs.gov

5. An explanation of the rule, including the agency's reasons for initiating the rulemaking:

A.R.S. § 36-405(A) requires the Arizona Department of Health Services (Department) to adopt rules to establish minimum standards and requirements for the construction, modification, and licensure of health care institutions necessary to assure the public health, safety, and welfare. Under A.R.S. § 36-405(B)(1), the Department classifies and subclassifies health care institutions based on six statutory licensing criteria. A.A.C. R9-10-102(A) includes home health agency as a class or subclass of health care institution.

9 A.A.C. 10, Article 11 sets the minimum standards for Arizona home health agencies that are not Medicare-certified. In R9-10-1102(B)(9)(d), the Department requires physical therapy services to be provided by a physical therapist. 9 A.A.C. 10, Article 11 does not specify a condition under which physical therapy services may be provided by a physical therapist assistant.

A.R.S. Title 32, Chapter 19 establishes the requirements for licensing of physical therapists and certification of physical therapist assistants. Laws 2006, Ch. 196, § 3 amended A.R.S. § 32-2043 to allow certified physical therapist assistants to perform selected services under the general supervision of a licensed physical therapist. Laws 2006, Ch. 196, § 1 amended A.R.S. § 32-2001 to define "general supervision" to mean "the supervising physical therapist is on call and is readily available via telecommunications when the physical therapist assistant is providing treatment interventions." The Board of Physical Therapy (Board) amended 4 A.A.C. 24 to implement the statutory changes in rule, effective June 30, 2007. 13 A.A.R. 1640, May 11, 2007.

In this rulemaking, the Department is amending R9-10-1102 to be consistent with A.R.S. §§ 32-2001 and 32-2043 and 4 A.A.C. 24 by allowing certified physical therapist assistants to perform physical therapy services for home health agencies under general supervision. The proposed rules conform to rulemaking format and style requirements of the Governor's Regulatory Review Council and the Office of the Secretary of State.

6. A reference to any study relevant to the rule that the agency reviewed and proposes either to rely on or not to rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:

The Department did not review or rely on any study related to this rulemaking.

7. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:

Not applicable

8. The preliminary summary of the economic, small business, and consumer impact:

Annual cost/revenue changes are designated as minimal when less than \$1,000, moderate when between \$1,000 and \$10,000, and substantial when greater than \$10,000.

It is the statutory change and the associated Board rulemaking that cause the economic impact to the cost bearers and beneficiaries identified below. The economic impact from this rulemaking on a cost bearer or beneficiary is limited to the scope of the cost bearer's or beneficiary's activities conducted by or through a home health agency.

Cost bearers and beneficiaries

The Department will experience minimal costs to notify licensed home health agencies of the new requirements.

Physical therapists could experience minimal-to-substantial costs due to decreased income from contract or employment where a physical therapist assistant can provide physical therapy services under general supervision at a reduced cost compared to a physical therapist. Some physical therapists could experience minimal-to-substantial benefits due to increased income from contract or employment to provide general supervision to physical therapist assistants.

Physical therapist assistants could experience minimal-to-substantial benefits due to increased income from contract or employment where a physical therapist assistant can provide physical therapy services under general supervision at a reduced cost compared to a physical therapist.

Businesses that provide physical therapy services could experience minimal-to-substantial benefits due to reduced costs to employ or contract physical therapists where a physical therapist assistant can provide physical therapy services under general supervision. Businesses that provide physical therapy services could experience minimal-to-moderate costs due to administrative and other costs of compliance with the rule, such as restructuring how physical therapists and physical therapist assistants are utilized.

Home health agencies could experience minimal-to-substantial benefits due to reduced costs to employ or contract physical therapists where a physical therapist assistant can provide physical therapy services under general supervision. Home health agencies could experience minimal-to-moderate costs due to administrative and other costs of compliance with the rule, such as restructuring how physical therapists and physical therapist assistants are utilized.

Third-party payers for health care services could experience none-to-substantial benefits due to savings for home health agencies and businesses that provide physical therapy services that may be passed along to consumers in the form of lower health care costs, thereby reducing third-party payer costs.

Notices of Proposed Rulemaking

Consumers of health care services could experience none-to-substantial benefits due to savings for home health agencies and businesses that provide physical therapy services that may be passed along to consumers in the form of lower health care costs.

It is the statutory change and the associated Board rulemaking that cause the impact on private and public employment. This rulemaking will only directly affect the private and public employment of physical therapists and physical therapist assistants by home health agencies and businesses that provide physical therapy services by or through home health agencies.

The Department does not have precise data on the number of solo practitioners, businesses that provide physical therapy services, or home health agencies that are small businesses as defined in A.R.S. § 41-1001, but believes that the majority are small businesses. Because of the statutory change, there is nothing the Department can do in rule to reduce the impact on businesses.

The Department does not anticipate that the rulemaking will directly impact state revenues.

Because of the statutory change, there is no less intrusive or less costly alternative method of achieving the purpose of the rulemaking of protecting the public health, safety, and welfare through the licensing of home health agencies.

9. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:

Name: Kathleen Phillips, Esq.
Rules Administrator and Administrative Counsel

Address: Department of Health Services
Office of Administrative Rules and Counsel
1740 W. Adams St., Suite 200
Phoenix, AZ 85007-2602

Telephone: (602) 542-1264

Fax: (602) 364-1150

E-mail: phillik@azdhs.gov

or

Name: Kathryn McCanna
Program Manager, Office of Medical Facilities Licensing

Address: Department of Health Services
Division of Licensing Services
Office of Medical Facilities Licensing
150 N. 18th Ave., Suite 450
Phoenix, AZ 85007-3445

Telephone: (602) 364-2841

Fax: (602) 364-4764

E-mail: mccannk@azdhs.gov

10. The time, place, and nature of the proceedings for the making, amendment, or repeal of the rule, or if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:

The Department has scheduled the following oral proceeding:

Date: Monday, June 23, 2008

Time: 9:30 a.m.

Location: Department of Health Services
1740 W. Adams St., Room 411
Phoenix, AZ 85007

Close of record: Monday, June 23, 2008, at 5:00 p.m.

Written comments on the proposed rulemaking or the preliminary economic, small business, and consumer impact summary may be submitted to either individual listed in items 4 and 9 until the close of record at 5:00 p.m. on Monday, June 23, 2008.

Individuals with a disability may request a reasonable accommodation by contacting Michael Bahr at (602) 364-0793 or bahrm@azdhs.gov. A request should be made as early as possible to allow time to arrange the accommodation.

Notices of Proposed Rulemaking

11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

None

12. Incorporations by reference and their location in the rule:

None

13. The full text of the rule follows:

TITLE 9. HEALTH SERVICES

**CHAPTER 10. DEPARTMENT OF HEALTH SERVICES
HEALTH CARE INSTITUTIONS: LICENSING**

ARTICLE 11. HOME HEALTH AGENCIES

Section

R9-10-1102. Administration

ARTICLE 11. HOME HEALTH AGENCIES

R9-10-1102. Administration

A. No change

1. No change
2. No change
3. No change
 - a. No change
 - i. No change
 - ii. No change
 - iii. No change
 - b. No change
 - i. No change
 - ii. No change
 - iii. No change
 - iv. No change

B. The administrator shall organize and manage the agency and shall be responsible for the following:

1. No change
2. No change
3. No change
4. No change
5. No change
6. No change
7. No change
8. No change
9. Ensuring that therapy and other professional services are provided, as follows:
 - a. No change
 - b. No change
 - c. No change
 - d. Physical therapy services shall be provided by ~~a physical therapist.~~
 - i. A physical therapist; or
 - ii. An individual who is certified as a physical therapist assistant according to A.R.S. Title 32, Chapter 19, who is under general supervision as defined in A.R.S. § 32-2001.
 - e. No change
 - f. No change
10. No change
11. No change
12. No change
13. No change

C. No change

1. No change

- 2. No change
- 3. No change
- 4. No change
- 5. No change
- D.** No change